1946

K

Exemption

File No. S. Bij-1/46

Legal DEPARTMENT

A. BRANCH

P 57 (c) (ii)
1946

Subject:— Suit - Bijapur.

Civil Suit No. 376 of 1947 ⊗ ~~1507 of 1946~~.

Annaji Venkatesh & anr.

Vs

The Pro. of Bijay & anr.

(G.R. P.J. No. 15 of)

⊗. Pl. see page 75 of the file in respect of this change.

File No. S - Bij - 1/46

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		For a declaration that the plffs as the Inamdars of the village of Gaddankeri are the owners by escheat of the suit land and for possession and future mesne profits.	
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great-grand father of the plaintiffs are paying the Judi for the whole village. The sanad granted to the said Balawant comprise of the whole village Gaddankeri including the gaonthan, waste lands forests beds of nallas etc. and plaintiff's family is the absolute owner of the whole property included in the sanad. The suit lands are the part of the property covered by the Inam.

3. Plaintiffs are thus the Inamdars of whole village of Gaddanketi and are invested with full powers over all the lands of the village as absolute owners. The Inamdar leases the lands in the village to the tenants and a Khata is opened in their names in his account which are kept by the village Kulkarni. The Khatedars are the tenants of the Inamdar paying rent to him. The Inamdar is in the position of the Govt. in his Inam village. The lands being given to the holders for cultivation, revert to the Inamdar whenever the Khatedar's family becomes extinct and the Inamdar has a right to resume possession of such lands and enjoy them as full owner or lease them to other tenants as he likes.

annual mahal judi of Rs. 1323-14-6 to Govt. (page 5 file I). The lands in suit are included in the Inam grant as Gaddankeri is an entire personal Inam village.

Notes for paragraph 3.

The holder of the suit lands Mr. Gadigeppa Nandappa Achanur of Gaddankeri died on 2-3-34 (page 1 fileIIIO intestate and without known heirs. The Mamlatdar of Bagalkot reported to the Dist. Judge, Bijapur on 20-1-36 and requested him to dispose of the property as owneless. He also reported that village Gaddankeri is an Inam village and that the Inamdar claimed the lands by escheat. The Dist. Judge Bijapur appointed the Nazir of the Dist. Court as an Administrator under sec. 10 of the Bombay Regulation VIII of 1827 (page 51- File III).

Mr. Shriniwas Annarao Desai (Inamdar) grand-father of the plff. applied to the Mamlatdar of Bagalkot on 7-1-1936 (page 41 file III)(translation enclosed)

4. The lands in suit were given by the plff.'s ancestor to the family of one Gurushiddappa Ramappa Chebbi, who was the original Khatedar. He sold his tenancy rights to one Gadigeppa Bandeppa Achanur of Gaddankeri in 1928. His son Hanmappa inherited his

~~xxxxxx~~ stating that the holder of the lands Gadigeppa Bandi died on 2-3-1934 without heirs and that the lands should revert to him.

On 10-2-1936(page 45)(file III) the Dist. Judge Bijapur issued notice and proclamation. The Inamdar then present did not appear in response to the notice and put in his written statement, (page 29, file II) after waiting for more than the statutory period, the High Court was moved for sale of right, title and interest of the deceased. The High Court sanctioned the sale. The sale was held and was confirmed by the Dist. Judge, on 26-3-1943.(page 102 file III). Deft. No. 2 Shivappa is the purchaser of the land sold by the Nazir. Plffs.thus have no cause of action against Govt. nor against the purchaser Deft. No. 2 and so the suit is not maintainable.

Paragraph (4)

It is true that Gadigeppa died on 2-3-1934, his wife being pre-deceased him. His son Hanamappa died on 23-3-1934. After these two Gadigeppa's daughter Bhagawwa, alias Devakkewwa died on 26-4-34 (page 7, file III). The report

rights. He died on 23-3-1934. He was succeeded by his sister Bhagawa alias Devakkawa. She died unmarried on 26-4-1984. There are no heirs to this Bhagawa and so the lands reverted to the original grantor's family. Plff's' grand-fathe Shrinivas Annarao was the Inamdar at that time.

5. The Inamdar informed the village officers to change the khata of the suit lands to his name in the absence of any heirs to the Khatedar of the lands. They, however, reported the matter to the Revenue Authorities, who in their turn reported the case to the Dist. Judge for orders. The Plff's grand-father applied to the Dist. Judge that he should be given possession of the lands as the lands reverted to him as Inamdar; The Dist. Judge, without - deciding the matter finally ordered that the Inamdar should get a declaration of his ownership against the Govt. and in the meanwhile the property should be held by the Govt. This order was - communicated to the plff's grand-father on 7-4-1941. Subsequently it is now from the village officers is translated in English.

The lands in suit were given to the ancestors of Gurushiddappa Ramappa Chebbi long back and no papers regarding the nature of the grant whether as a permanent tenant or as a Khata tenant are available. Up to 1928 Gurushiddapax enjoyed the lands when in 1928 he sold them to Gadigeppa who subsequently died without heirs as mentioned in paragraph 1 above.(page 5 file I).

5. The Plffs.' grand-father has not applied to the Dist. Judge nor has he given his written statement in response to the notice issued by the Dist. Judge, Bijapur, (page 29 file II)

The lands in suit were sold by the Nazir and Administrator to the Dist. Judge, Bijapur and the sale was confirmed by the Dist. Judge on 26-3-1943,(Page 102, file III) It is not correct that the Collector of Bijapur held the sale and that the land was sold to Deft. No. 2 by the Collector. Deft. No. 2 is the purchaser of the lands in the sale held by the Nazir, Dist. Court.(Please also

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learnt that the Collector of Bijapur has sold the suit lands to Deft. 2 who is now in possession of them. The sale is ultra-vires and illegal and is not binding on the plffs. Deft. 1 has no title to the suit lands and his agent the Collector had no right to dispose of the property. Hence defendant 2 cannot get any valid title. A notice was given to defendant 1 to hand-over possession of the suit lands to the plff. which has not been done so far. Deft. 2 also is refusing to hand over possession to plffs on the ground that he is a purchaser from defendant 1. Hence this suit.

6. The cause of action arose on 7-4-1941 when the order of the Dist. Judge was communicated to the plff's grand-father.

7. The plffs. are the grand-sons of the original Inamdar Shrinivas Annaji Desai, who died on 28-5-1945, their father having predeceased him. Hence they have a right to bring this suit as owners of the suit property.

8. Valuation:- Rs.a.p.

(a) For possession of the suit lands, 7½ times the assessment of the suit lands which is Rs. 5/-. 37-8-0

(b) Mesne profits for the years 1943-44, 1944-45, and 1945-46 vide notes against paragraph 3 of the plaint).

H 7 9

at the rate of Rs. 25/-
per year. 75-0-0

Total Rs. 110- 0-0

Court fee is paid on Rs. 110/- only. The valuation for the purpose of jurisdiction and pleader's fee is Rs. 475/-.

9. Notice has been given to deft. No. 1 as required by Sec. 80 of the C.P.Code. But no reply has been received. Gaddankeri being an Inam village, the record of rights is not made applicable to it. Hence extracts of them have not been produced.

10. Plffs' prayer:-

(a) Plffs. should be declared to be the owners of the suit property by escheat and possession thereof may be awarded to them from the defendants.

(b) Past mesne profits of Rs. 75 should be awarded from the responsible defendants.

(c) Future mesne profits from date of suit upto the date of obtaining possession by the plffs. may be awarded.

(d) Costs of the suits.

(e) Such other relief as the Court deems fit.

In view of the facts stated above the Plffs. are not entitled to maintain a suit for the possession of the suit lands and for mesne profits against Govt.

The contents of the above plaint have been explained to me in Kannada and they are written according to my instruction

Statement showing a brief description of documents referred to in suit No. 15 of 1946.

S.No.	Brief description.	Page No.	File No.
1	Report from the Mamlatdar of Bagalkot to the Dist. Judge, Bijapur stating that the holder of suit lands Gadigeppa died on 2-3-1934 intestate and without known heirs.	1	III
2	Application of the Inamdar of Gaddankeri, requesting that the property of the deceased Gadigeppa should be entered in his name as he is the Inamdar of the village. (English translation enclosed).	41	III
3	Notice by the Dist. Judge calling -- for claimants if any of the Intestate property.(English translation enclosed).	43 to 47.	III
4	Order of the Dist. Judge appointing the Nazir of the Dist. Court as Administrator.	51	III
5	Regarding failure of the Inamdar to appear before the Dist. Judge and to put in written statement.	29	II
6	Sanction of the sale of the right, title and interest of the deceased over the suit lands.	29	II
7	Notice of suit by the plff. dated the 19-12-1945.	1	IV
8	Suit for mesne profits etc.,	7	IV

12-10-46.

For Collector, Bijapur.

This relates to the defence of Bijapur Civil Suit No. 15 of 1946 which is for a declaration that the plaintiffs as the Inamdars of the village of Gaddankeri (Taluka Bagalkot) are the owners by escheat of lands bearing S.Nos. 107 and 133 of that village, and for possession of those lands with past and future mesne profits. The relevant facts leading to the institution of the suit are as under:-

The lands in suit were held by one Gadigeppa Nandapp Achanur of Gaddankeri. He died intestate on 2nd March 1934 leaving him surviving a son named Hanmappa and a daughter named Bhagawa alias Devakkawa. Hanmappa and Devakkawa both died respectively on 23rd March 1934 and 26th April 1934. As the deceased Gadigeppa had not left any other known heirs, the Mamlatdar of Bagalkot made a report to the District Judge, Bijapur on 20th January 1936, and requested that the property may be disposed of as deemed fit as "ownerless property". On 1st February 1936 the District Judge passed an order under section 10 of the Bombay Regulation VIII of 1827, appointing the Nazir of the District Court as the administrator for the management of the property and directing the issue of the usual notice and proclamation. The proclamation in the form contained in Appendix C of the Regulation was accordingly published on 10th February 1936. From 1936 onwards the suit lands were given on annual leases.

File III p.1.

File III p.47A.

In 1940 the Inamdar of the village of Gaddankeri applied to the Mamlatdar of Bagalkot for restoration to him of the suit lands. He alleged that Gaddenkeri was his own personal Inam village, that the lands in suit were granted by his ancestors to the ancestors of the deceased and that on the latters' death intestate and without any heirs the lands should escheat to the Inamdar. He was however unable to produce any evidence to prove the grant in favour of the deceased and to show when and by whom

the lands were acquired from the Inamdar's family. The record however shows that the Inamdar did not appear before the District Judge and establish his alleged rights under clause 3 of section 10 of the Regulation of 1827. The Revenue Officers did not dispute the Inamdar's case that the village was a personal or Jat Inam of his family and that the suit lands were granted as a Jadid Inam. They therefore took the view that the lands should revert to the Inamdar. The District Judge who was requested to give his rewards in the matter declined to give any opinion and informed the Collector that the proper course would be to ask the Inamdar to get a declaration from the Civil Court that he is entitled to the land after impleading the Provincial Government as a party. File II p. 29

As the Inamdar did not appear and prefer his claim, the District Judge, after waiting for more than the statutory period prescribed in clause (4) of section 10 moved the High Court for sanctioning the sale of the right, title and interest of the deceased in the lands. The High Court having sanctioned the sale, the administrator was asked to hold the sale and to deposit the proceeds in public treasury. The lands were finally sold on 23rd March 1943 for Rs.60/- and Rs. 208/- and were purchased by defendant No.2. On 26th March 1943 the District Judge confirmed the sale and ordered the balance of the sale proceeds, after deducting the administrator's commission and out of product expenses to be deposited in the Government Treasury, to the credit of the intestate person. File II p 25, File III p 99-100 File III p 101-102

On 1st December 1945 the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code and on 4th June 1946 they filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

It is clear that in this case Government has no personal interest in the suit lands or the proceeds of the sale thereof. The plaintiffs did not appear before the District Judge in answer to the proclamation and establish their claim to the suit lands, within the time prescribed in clause 4 of section 10 of

the Regulation of 1827. The sale of the suit lands was therefore held after obtaining directions in that behalf from the High Court. The proceeds of the sale are, under clause (4) of section 10, not credited to Government but are credited in the public treasury for the eventual benefit of all concerned. [There is therefore no substance in] the plaintiff's contention that the land [sale held] by the [District Court] is [illegal and ultra vires] not correct. The pltffs have no cause of action against Govt & hence the Suit is not maintainable [It is nevertheless open to the plaintiffs to establish ~~his~~ their right in the Civil Court as the persons entitled to the lands on the ~~date~~ death of the occupant intestate and without heirs. On this point Government need not join issues with the plaintiffs beyond putting them to strict proof of their claim as Kadim Inamdars. If the Court holds the plaintiffs' claim established, Government may abide by the Court's order as regards the disposal of the sale proceeds which are held in deposit by Government under section 10 clause (4) of the Regulation of 1827.]

If, approved the District Government Pleader may be requested to file a wittten statement on the line indicated in the preceding para and to inform the Court that Government [has no interest in the Suit property since it has been sold under the orders of the Court but it is a neutral party in this suit and should not be marked in costs. Costs of Court may be awarded.

RM 17/1/47.

A.L.R. As amended

R.L.A. RK 17/1

Seen RD 24/1

Seen 11.

*No. 858

dt. 23-1-47

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In the Court of Civil Judge Senior Division, Bijapur.

Civil Suit No. ~~15 of 1946.~~

1-3

1. Annaji Venkatesh
2. Gurunath Venkatesh
minors by their next friend Padmavatibai Venkatesh of Gaddankeri.... Plffs.

Vs.

1. The Province of Bombay & another. Defts.

Herein the Deft No. 1 by his written-statement states as under:-

1. In the Proceedings under clause 10 of Bombay Regulation VIII of 1827 in respect of suit lands the District Judge Bijapur appointed an administrator on 1-2-1936 and issued a proclamation in accordance with clause 10 of the said Regulation. The Proclamation was duly published. The Plffs or the Inamadar of Gaddankeri did not appear and establish their right to the suit lands. After waiting for more than the statutory period the High Court was moved to sanction the sale of the right title and interest of the deceased in the lands. The High Court sanctioned the sale. The Administrator under the authority of the Court sold the lands and the proceeds were depositted in the Public Treasury for the eventual benefit of all concerned.

2. Plffs' allegations in para 5 of the plaint to the effect that the plffs' grand father applied to the District Judge, for possession of the lands that the District Judge ordered * land and that it was communicated to plffs' grand father on 7-4-1941 are [denied] are misleading and incorrect and hence not admitted.

* that the lands should not be sold as declaration of his minority of plaintiff's ancestors

3. The plffs' contention in para 5 of the plaint that the Collector sold the suit lands is not correct.

4. The lands were sold by the Administrator under the orders of the Court.

5. This defendant has no interest in the suit lands or in the proceeds of sale thereof.

6. The allegation in para 6 of the plaint is denied. The plffs have no cause of action against this defendant and hence plffs' suit against this defendant is not maint--ainable.

7. This defendant is not in possession of the suit property and the plffs are not entitled to any of the reliefs prayed for by them from this defendant.

8. This defendant is not liable to pay past mesne profits claimed by plffs and the amount claimed by plffs is highly excessive.

The defendant submits that plffs' suit against this defendant be dismissed and that this defendant be awarded his costs from the plffs.

District Government Pleader,
Bijapur.

I, Rao Sahib A.C.Angadi District Government Pleader Bijapur hereby declare that that what is stated in paras 1 to 8 above is true on information received and believed to be true. Signed on at Bijapur.

District Government Pleader,
Bijapur.

The letter from the Government Pleader, Bijapur dated 29-11-1948 with its accompaniment may please be seen. In this case the plaintiffs who are the Inamdars of the village of Gaddankeri claim that they are owners of the suit lands which were Jadid Inam lands belonging to one Gadigappa Nandappa. Gadigappa died intestate on 2nd March 1934 leaving a son and a daughter both of whom died in the same year. In 1936 the District Judge acting under section 10 of the Bombay Regulation VIII of 1927 appointed the Nazir as the administrator of the property and directed the issue of notice and proclamation which was duly published in the form in Appendix C of the Regulation.

In 1940 the Inamdar claimed the suit lands as owner by escheat alleging that they were granted by his ancestors to the ancestor of the deceased. He did not however appear before the District Judge and establish his claim under section 10(3) of the Regulation. The Revenue Officers did not dispute his claim but the District Judge informed the Collector that the Inamdar should get from the Civil Court a declaration of his rights after impleading Government as a party.

After the expiry of the statutory period prescribed in section 10(4) of the Regulation the District Judge moved the High Court for sanctioning the sale of the right title and interest of the deceased in the lands. The High Court's sanction having been obtained the property was sold and the proceeds deposited in public treasury. The District Judge confirmed the sale and ordered that the proceeds, after deducting the administrator's costs should be kept in the treasury to the credit of the intestate person. This led to the present suit.

Government did not claim any personal interest in the suit lands or in the proceeds of the sale thereof which are held for the eventual benefit of all concerned. The lands were sold because the plaintiffs failed to appear before the District Judge in answer to the proclamation

to establish their title within the statutory period. The lands were sold after obtaining direction in that behalf from the High Court. The plaintiffs had therefore, no cause of action against Government who do not claim any interest in the suit property. This was the stand taken by Government in their written statement and issues were framed. Sr. 1-57-61

The Government Pleader reports that while the suit was being argued on 24-11-1948 the plaintiffs' pleader cited an "authority" and argued that "the right of possession in the case of a lease does not pass by escheat to the Crown" while "Mr. Rao argued that the Transfer or Property Act is not applicable to agricultural leases". The Court therefore framed three additional issues on that day and the Government Pleader wants to know if there are any fresh instructions to be given to him.

The Court's order is not quite intelligible. The Crown or Government has not at any stage claimed any interest in the suit property and therefore the question of the property passing by escheat to the Crown does not arise. But from the new issues framed by the Court the plaintiffs' argument seems to be this - that the deceased Gadigappa had only a leasehold interest in the suit lands which were granted to his ancestors by the anscestors of the plaintiffs, that on the lessee's family becoming extinct the lands reverted to the Inamdar as a landlord, that in these circumstances the deceased could not be said to have left any property within the meaning of the Regulation VIII of 1827 and that for that reason the proceedings taken by the District Judge under that Regulation were ultra vires. The plaintiffs seem to have relied upon a passage in note 6 at p.1562 of Chitale's Transfer of Property Act Vol III.

Even the additional issues will however be amply covered by the contentions taken inthe written statement. The burden of proof of the issue has been correctly thrown on the plaintiffs. It is clear that the property was sold by the District Judge under the High Court directions because of the failure of the plaintiffs to appear and establish the claim thereto. Government has not claimed any interest in it and therefore

21/83

even if the plaintiff succeeds in proving this title as landlord he cannot get any decree against Government. As stated before, proceeds of the sale of the suit lands are not credited to Government but are kept in deposit for the eventual benefit of all concerned. The District Government Pleader may be instructed on these lines.

R.M.S 16/12/48

R.L.A

The attached Annexure is in the direction of setting the proceedings under the Regulation declared ultra vires and thereby forfeitability upon us. We should try to meet it if we possible the legal position underlying the new issues.

R. 16/12/48

A.L.

I submit the new issues Nos. 2 and 3 are misconceived and irrelevant. Section 10 of the Regulation VIII of 1927 under which action was taken by the District Judge and the High Court comes into operation whenever any person dies intestate and without known heirs, leaving property. At p.1562 of Chitale's Transfer of Property Act Vol. 3, the following passage occurs :

> "But the ownership of property always carries with it the right of possession also. The right of possession, no doubt, can be separated and transferred to another person. This is what happens under a lease. But the moment it ceases to belong to any one else, it will automatically come back and vest in the person entitled to the ownership of the property. Hence, when the last holder of a lease dies intestate and without

"leaving any heirs, the owner of the property automatically gets back the right of possession. The right of possession does not pass by escheat to the Crown in such a case".

Relying on this passage the plaintiffs contend that the deceased Gadigappa and his ancestors were lessees from the Inamdars and that on the extinction of Gadigappa's family the lands automatically revert to the plaintiffs as landlords, that therefore the deceased could not be said to have leaving any property and consequently the proceedings under the Regulation were void.

We do not know what evidence the plaintiffs have led at the trial to prove their title as landlords. But the suit lands were held by the deceased at the time of his death and most probably they must have been entered in his name in the revenue records. Otherwise, the revenue officers would not have reported to the Court to dispose of the lands as "ownerless". There was at that time no evidence to show that the plaintiffs had any interest in the suit lands. The Administrator was appointed by the District Judge in 1936 and the proclamation issued and published on 10-2-1936. The proclamation under section 10 calls upon the heir of the deceased or any person entitled to receive charge of the property to attend and prefer his claim. Clause (3) provides that if any person appears and satisfies the judge of his right to possession of the property or any part of it as heir, executor, administrator or otherwise, it shall be delivered up to him after deducting the necessary expenses of management.

The Inamdars did not appear before the District Judge in answer to the proclamation. Four years later, in 1940, they represented to the Revenue authorities that the suit lands were jadid Inam and that on the death of the last holders they had become owners by escheat. At that time they did not claim the lands as landlords. Even then, they were unable to produce any evidence to

prove the grant of the Jadid Inam. Although the revenue officers did not dispute the plaintiffs' claim of ownership by escheat, the District Judge rightly held that the Inamdar should get a declaration of his title from the Civil Court.

The Inamdar however never appeared before the Dist. Judge nor did he get his claim established in a Civil Court. It was open to him to go to the Civil Court and obtain a stay order of the proceedings under the Regulation pending the adjudication of his claim. Under the fourth clause of section 10 of the Regulation, if no person appears and establishes his right the Judge, on the 31st December next after the completion of twelve months from the appointment of the administrator shall make a report of the case to the High Court and it shall be lawful for the High Court either to direct the property to continue for a further period under management of the administrator, or to be sold by him and the proceeds to be deposited in the public treasury for the eventual benefit of all concerned.

The District Judge had made his report under clause (4) long after the expiration of the statutory period and the property was actually sold under the orders of the High Court on 23rd March 1943, and it was more than two years afterwards that the plaintiffs gave notice of the suit. Thus looking to the facts of the case there is not the slightest scope for challenging the validity of the proceedings under the Regulation. So far as Govt. is concerned, it is now immaterial whether they succeed or not in proving their claim. If they succeed Government can of course have no objection to pay the sale proceeds which are deposited in the public treasury minus the costs of managing the property and other incidental costs if any. But the plaintiffs obviously cannot get any decree

against Government for possession and mesne profits even if the 1st issue is decided in their favour. That, I submit, is the correct position.

RLL
22/12/48

R.L.A A.L.R. Jadid Inams are grants made by the Inamdar after the original grant and as such the grantees of Jadid Inams are not lessees. Such grants would be governed by the conditions of the grant and no relationship of landlord and tenant is created. Consequently the authorities relied on by the plff will have no application and the issues raised by the Civil Suit are misconceived.

R K 23/12

R.L.A We should state the position as a brief note for the benefit of the A.G.P.

R
23/12

I might suggest that A.A of my case will be followed by A.C.A should be the reply to the O.S.

RS
23/12

R.L.A R 24/12

Please get the roll typed as indicated & forward it to the A.G.P. by noon tomorrow & we shall then have it settled

RL
24/12

Received on:-17-9-47. Decided on:-5-2-49.
Registered on:-17-9-47. Duration:-1 year,4 months & 18 days

In the Court of the Civil Judge(Sr.Dn).

At Bijapur. Ex.33.

Civil suit no.376 of 1947.

Pleaders.

Mr.A.B.Kenkan-wadi.

1. Anneji,age 12)father Venkatesh Desai,
2. Gurunath," 10)Brahmin,agriculturist,
minors by next friend and natural mother Padmavatibai w/o Venkatesh Desai,Brahmin,agriculturist,of Gaddankeri, taluka Bagalkot. ... Plaintiffs.

against

Mr.K.R.Rao. (Dist.Govt.Pleader).

1. The Province of Bombay.
2. Shivappa Hingappa Gerkop,age, ,Lingayet, agriculturist of Gaddankeri,taluka Bagalkot. Defendant

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Claim-Rs.112-8-0.

Judgment.

Suit for a declaration of the plaintiff's title to the property,for possession together with a claim for past and future mesne profits.

2. The plaint is based on the allegations that Gaddankeri is an Inam village granted to the plaintiff's ancestor as personal Inam,that a Sanad was issued,that the tenants are paying rent to the Inamdar,that in the absence of heirs the land is liable to be restored to the plaintiff as owner,that the land in suit was let out to one Gurushiddappa,that he sold the lease-hold to one Gadigeppa in 1928,that his son Nanameppa came into possession.that he died on 23-3-1934.that on his

death his sister Bhagava came into possession, that she died on 26-4-1934 without leaving heirs, that in consequence the plaintiff is entitled to the property, that the plaintiff moved the Revenue authorities and the District Judge, that the land was sold by the Collector, that the sale is ultra-vires, that defendant no.2 has not got title to the property, that defendant no.2 refused to deliver up possession and that the cause of action arose on 7-4-1941 when the order of the District Judge was communicated to the plaintiff's grand-father.

3. The Government of Bombay (defendant no.1), contends that the land was sold under Act VIII of 1827, that the High Court sanctioned the sale that the plaint allegations are untrue, and that no cause of action has accrued to the plaintiff.

4. Defendant no.2 in his written statement contends that the sale is valid, that the plaintiff is not entitled to the lease-hold rights, that the plaint allegations are not true, that the sale is binding on the plaintiff and that the suit is not tenable.

5. The following issues were framed in the case.

1. Whether on the death of Gadigeppa who died without known heirs the right of possession vested in the plaintiff entitled to the ownership of the property as land-lord ?
2. If so, whether it could be said that he died leaving property within the meaning of Bombay Regulation VIII of 1827 ?
3. If the second issue is answered against the defendants whether the proceedings under the said Act were ultra-vires of the law ?
4. If so, whether the plaintiff is entitled to the property ?
5. Whether the sale was ultra-vires of the law and illegal as alleged in the plaint ?
6. Whether plaintiff proves that the line of the holders of suit - land became extinct ?
7. Whether plaintiff proves that his family has got a right to resume the lands on the extinction of the holder's line ?
8. Whether plaintiff proves that the sale of suit lands held by the Administrator was illegal and not binding upon him ?

9. Whether the right of resumption of plaintiff's family extinguished on account of the silent conduct of plaintiff's ancestor in the proceedings started under sec.10 of Regulation VIII of 1827 ?

10. Whether plaintiff is entitled to possession or the recovery of the sale proceeds ?

11. Whether plaintiff proves his title to the suit lands ?

12. Whether plaintiff's claim is in time ?

13. Whether defendant 2 proves the improvements and their costs ? What equitable orders should be passed while awarding possession to plaintiff ?

14. Whether defendant 1 is liable ? What orders about its costs ?

15. To what arrears of mesne profits is plaintiff entitled

16. Whether plaintiff is entitled tothe declaration as sou

6. My findings are:-

1. Yes; but he cannot question the sale.

2. He died leaving property in the shape of the lease-hold i dispute.

3. Were intra-vires.

4. Only to the sale proceeds.

5. No.

6. Yes.

7. Not after the sale.

8. No.

9. The plaintiff cannot go behind thesale.

10. Is entitled to thesale proceeds.

11. Yes.

12. Yes.

13. No.

14. No.

15. Does not arise.

16. General issue.

7. One Gadigeppa was in possession of suit lands bearing S.Nos.127 and 133 as a permanent tenant. He died intestate and without known heirs and, in consequence, proclamation was published and the property was sold. The proceeds were deposited in the Public Treasury for the eventual benefits of all concerned and this is a suit by the plaintiff for a declaration that he is the owner of the lands as Inamdar of the village, that the right of possession does not pass by escheat to the Crown in such a case, and that the sale is invalid.

8. Now Rule 10 of Bombay Regulation VIII of 1827 is as follows:-

"10. First:- Whenever any person dies inestate and without known heirs, leaving property, the Judge within whose jurisdiction the property is, shall appoint an administrator for the management thereof, and shall issue a proclamation in the form contained in Appendix C. calling upon the heir of the deceased or any person entitled to receive charge of the property, to attend and prefer his claim.

"Second:- The proclamation shall be published i.....and if the deceased was a native of any district or country within the limits of the Court's jurisdiction.....

"Third:- If any person appears and satisfies the Judge of his right to the possession of the property or any part of it as heir, executor, administrator or otherwise, it shall be delivered up to him, after deducting the necessary expenses of management.

"Fourth:- But, if no person appears and establishes his right, the Judge, on the 31st.December next after the completion of (12). twelve months from the appointment of the administrator, shall make a report of the circumstances of the case to the Sadr Diwani Adalat, accompanied by an inventory and valuation of the property; and it shall be lawful for the Sadr Diwani Adalat either to direct the property to continue for a further period under the management of the administrator, or to be sold by him under the authority of the Court and the proceeds to be deposited in the Public Treasury for the eventual benefit of all concerned"

Reasons.

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9. The evidence establishes that the plaintiff did not appear and establish his right. In consequence, the District Judge made a report to the High Court accompanied by an inventory (Ex. 23), and valuation of the property. The High Court thereupon, ordered the property to be sold. The property was sold and the proceeds were deposited in the Public Treasury for the eventual benefit of all concerned.

10. The main contention for the plaintiff is that the Registrar sanctioned the sale and not the High Court. It is noticeable that the Registrar was moved by the plaintiff to supply him with a copy of the order sanctioning the sale and he replied that "the Record of the Intestate properties is destroyed after every three years and that a copy of the order cannot be supplied".

11. Now the letter written by the Registrar (Ex. 24), is to the effect that "The Hon'ble Judges of His Majesty's High Court of Judicature have been pleased, in accordance with the provisions of the above clause, to direct that the property be sold by the administrator under the authority of the District Court".

12. The order of the District Judge passed on 7-3-1941 is in these terms:-

"Proclamation had been issued as required by section 10 of Regulation VIII of 1827 and duly published. The Inamdar of Haddakeri did not appear and put in his claim. After waiting for more than the statutory period, the High Court was moved to sanction the sale of the right, title and interest of the deceased in the lands. The High Court have sanctioned the sale. The Administrator has been asked to hold the sale and deposit the proceeds in the Public Treasury by 31-3-1941".

13. In due course, the sale was sanctioned by the District Judge on 26-3-1943.

14. I hold that the sale was properly held under Rule 10 of Bombay Regulation VIII of 1827 after a proclamation was duly published and after the High Court directed the property to be

sold. The plaintiff should have appeared and established his right. He cannot question the sale after it was sanctioned by the District Judge.

15. The next question is whether the plaintiff is entitled to the proceeds deposited in the Public Treasury. Rule 10 -- provides that the proceeds shall be deposited in the Public Treasury "for the eventual benefit of all concerned".

16. Now a lease is a transfer of a right to enjoy immoveable property. The fundamental conception of a lease is that it is the separation of the right of possession from ownership. The following is taken from Chitaley's Transfer of Property Act, Vol. III, 1st. edition, pages 1961-62.

"A lease of immoveable property is only a transfer of the right of possession of such property. Although such a right is an interest in the property, it is distinct from the ownership thereof. As Salmond points out in his Jurisprudence, the ownership of property is only a particular kind of right in it. Thus, the ownership of land denotes the right known under the English law as the fee simple in the land.

"But the ownership of property always carries with it the right of possession also. The right of possession, no doubt, can be seperated and transferred to another person. This is what happens under a lease. But the moment it ceases to belong to any one else, it will automatically come back and vest in the person entitled to the ownership of the property. Hence, where the lessee holder of a lease dies intestate and without leaving any heirs, the owner of the property automatically gets back the right of possession. The right of possession does not pass by escheat to the Crown in such a case. The reason is that escheat takes place only when a thing does not belong to any body. It is based on the maxim quod nullius est, est domini regis (that which belongs to no one belongs to the King). But so long as there is a person entitled to the ownership of the property it cannot be said that the right of possession of such property belongs to no one. Because, unless such a right is vested in some one else, it always belongs to the person entitled to the ownership of the property".

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17. In this state of the law, my finding is that the right of possession automatically comes back and vests in the plaintiff entitled to the ownership of the property, where the last holder of the lease dies intestate and without leaving any heirs. The right of possession does not pass by escheat to the Crown in such a case. The plaintiff is, therefore, entitled to the sale proceeds. It is true that the plaintiff by his plaint asked for the delivery of the land. But relief can always be given under O.7 rule 7 C.P.C. to the same extent as if it had been asked for provided it is not inconsistent with that specifically claimed and with the case raised by the pleading. To my mind, the ground for such relief is disclosed by the allegation in the plaint, which is proved, viz., that the plaintiff is entitled to the lands as owner.

18. Defendant no 2 in his evidence Ex.16 states that he has effected improvements by expending a sum of Rs.300-350. He has not maintained accounts. It is impossible to act on his uncorroborated testimony. I disbelieve his version.

19. In the result, I pass a decree declaring that the plaintiff is entitled to the sale proceeds deposited in the Public Treasury as a result of the sale in question. As the plaintiff unwarrantably questioned the validity of the sale he should pay the costs of the defendants (separate sets). The suit fails in respect of the other reliefs prayed for.

5-2-49.

Sd. A. C. Sequeira,
Civil Judge (Sr.Dn). Bijapur.

True Copy

Deputy Govt Pleader

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Civil Appeal No. 38 of 1949.

In the Court of the District Judge, Bijapur.

1. Annaji, age 14) father Venkatesh
2. Gurunath " 12) Desai, caste Brahmins, occupation agriculturists, minor by guardian, Deputy Nazir District Court, Bijapur. ..... appellants.

Vs.

1. The Province of Bombay.
2. Shivappa Ningappa Sarkop, age caste Lingayat, occupation Agriculturist, of Baddankeri taluka Bagakot. respondents.

Claim Rs. 112-8-0.

Being aggrieved by the decree passed by the Civil Judge, Senior Division, Bijapur on 5-2-1949 in Civil Suit No.376 of 1947, the appellantsbegs to prefer an appeal against the same on the following among other grounds:-

1. That the lower court erred in holding that the plffs cannot question the sale held by the Collector
2. That the lower court erred in holding that the proceedings under Bombay Regulation No.VIII of 1827 were intra vires.
3. That the lower court erred in holding that there was a valid sanction from the High Court to hold the sale.
4. The lower court ought to have held that the sale of the suit lands was ultra vires of the law and illegal.
5. The lower court erred in holding that the plffs-appellants have no right to resume the lands on the extinction of the holder's time after the sale.
6. The lower court ought to have held that the sa held by the administrator was illegal and not binding upon the plffs.

(7). The lower court ought to have held on its own finding that the deceased left no property after his death as his tenancy rights reverted to the original owner namely the Inamdar immediately after his death.

(8). The lower court ought to have held that the suit property was not the property of Gadigeppa and as such the provisions of section 10 of Regulation VIII of 1827 were not applicable.

(9). That the lower court erred in not awarding actual possession of the suit property to the appellants.

(10). The lower court erred in holding that the documentary evidence produced by respondent No.2 about the alleged sanction of the High Court was sufficient to hold that there was a judicial order as required by section 10 Clause 4 of the Regulation.

(11). The order of the lower court as to costs is wrong.

(12). The decree of the lower court is contrary to law and evidence.

It is therefore prayed that the decree of the lower court be set aside on the abovementioned grounds among others and plffs' suit be decreed with costs throughout.

Bijapur
16-3-1949.

Sd. A.B.Kankanwadi.
Pleader for the appellants.

N.B. The undersigned represented the appellants in the lower court The vakalat still holds good. so no fresh Vakalatnama is filed.
16;3-1949.

Sd. A.B.Kankanwadi.
Pleader.

Admitted. Notice
K and P.

" True Copy "

Sd. R.H.Mirajkar.
23-3-49 District Judge.

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Dist. Govt. Pleader,
Bijapur.
12-4-1949.

Suits:

Bijapur.

For a declaration that the plaintiffs as the Inamdars of the village of Gaddankeri (Taluka Bagalkot) are the owners by escheat of the suit land, and for possession and future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7155
Bombay Castle, 28th June 1949.

Letter from the Collector of Bijapur, No.L.A.V. -177 dated the 8th June 1949, stating that the plaintiffs in the suit noted in the margin filed civil appeal No.53 of 1949 in the Court of the District Judge, Bijapur against the decision of the Civil Judge, Senior Division, Bijapur, ~~decision of the Civil Judge, Senior Division, Bijapur~~, dated the 5th February 1949, and requesting sanction to the defence of the appeal.

In the Court of the Civil Judge, (Senior Division), Bijapur.

Annaji V. Desai
Gurunath V. Desai. ....Plaintiffs
Vs.
Province of Bombay and another. ... Defendants.

RESOLUTION :- Sanction is accorded to the defence of Civil Appeal, No.53 of 1949 in the Court of the District Judge, Bijapur on ~~the issues~~ the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Bijapur, dated the 5th February 1949.

By order of the Governor of Bombay,

Signed R. M. Mehta
R. M. MEHTA.
Assistant Secretary to Government.

To
Revenue Department,
The Collector of Bijapur,
The Commissioner, Senior Division,
The District Government Pleader, Bijapur.

Issued copy 28/6

Subd for sign.
UK. 27.6. Orders at p. 20
RM
27/6
As amended
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43 (27)

In the Court of the Assistant Judge,
of Bijapur.

Civil appeal No. 53 of 1949 from the Decree in Civil Suit No. 376 of 1947 of the Court of Civil Judge Senior Division, Bijapur (Shri A.C. Sequeira).

Shri A.B.Kankanwadi. 1. Annaji) Venkatesh Desai, minors
2. Gurunath) by guardian Deputy Nazir,
District Court, Bijapur. — appellants -plffs.

Vs.

Shri K.R.Rao (Dist.Govt.Pleader) Shri A.V.Albal.
1. The Province of Bombay.
2. Shivappa Ningappa Sarkop. — respondents -defts.

Claim Rs. 112-8-0.

This is an appeal against the judgment and decree of the Civil Judge, Senior Division, Bijapur, in Civil Suit No.376 of 1947. The appellants are the original plaintiffs. They brought the suit against the respondents for possessic of the suit lands and past and future mesne profits. The plaintiff alleged that the suit lands were part of the village of Gaddankeri which is a personal Inam of the appellants and the tenants were paying rent to the Inamdar that on any tenant dying without leaving heirs, the land reverted to the Inamdar; that the suit lands were first ~~xxx~~ leased to one Gursidappa and that the rights were sold ~~xxx~~ by him to one Gadigeppa in 1928. Gadigeppa's son Hanamappa came into possession of those rights on the death of Gadigeppa on 23-3-1934. Thereafter, on Hanamappa's death, his sister Bhagawa came into possession and died without leaving any further heirs on 26-4-1934. Therefore, the appellants claimed that the property reverted to them. The alleged that the lands were sold unauthorisedly by the Collector as being without any claimants and that they were purchased by the respondent No.2; that the respondent No. 2

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refused to deliver possession to the appellants and the appellants too could not get any redress from the District Judge. Therefore, they brought this suit for possesion. The respondent No.1, the Province of Bombay, contended that the sale was held under Regulation VIII of 1827, and that the sale having been sanctioned by the High Court, the appellants had no right to possession. The respondent No.2 also contended that the sale was valid and that the appellants were not entitled to recover possession. On these pleadings, the learned Civil Judge framed issues as to whether on the death of Gadigeppa without leaving heirs, the right of possession reverted to the appellants and if so, whether the property was liable to be sold under the Bombay Regulation VIII of 1827. He also raised an issue as to whether the sale was ultra vires and would not confer any title to the respondent No.2 . Other issues also were raised, but they are not material for the purpose of this appeal. On taking evidence the learned Civil Judge found that on Gadigeppa's death without leaving any heirs, there was a reversion to the appellants, but that the sale held under Regulation VIII of 1827 was valid and binding on the appellants. He came to the conclusion that the appelants were entitled to the sale proceeds which were deposited in the Treasury at Bijapur and therefore passed a decree in favour of the appellants only for a declaration that the appellants were entitled to recoverthe sale proceeds from the Bijapur Treasury. Against this decision the original plaintiff has come in appeal.

2. The points which have been raised before me on their behalf are:-

1. Whether Gadigeppa died leaving any property within the meaning of the Bombay Regulation VIII of 1827 ?
2. Whether the sale held by the Administrator was valid and binding on the appellants ?

in this case. The submission on behalf of the appellants is based on the following points. It is submitted on behalf of the appellants that in-as-much as Gadigeppa was a tenant of the appellants, on his death intestate without leaving any heirs, the lease-hold rights came to and end and there was a reversion in favour of the appellant as the landlords. Therefore, it is submitted, there was no property left by Gadigeppa within the meaning of the above Regulation. It is also submitted that on the death of the leassee leaving no heirs, the property does not go by escheat to the Crown but reverts to the land lord. In the present case, however, the property was not sold by the Crown as having been vested in the Crown by escheat . Therefore, the question as to whether the property vested in the Crown would not properly arise in this case. The only question which we have to consider in the context of the facts of the case is as to whether the procedure contemplated by the above Regulation would come into operation on the death of Gadigeppa and would entitle the Administrator to sell the suit property.

6. The preamble to the Regulation states that the rules under the Regulations were enacted to provide for the contingency where a person possessed of property died intestate and without know heirs, and it is essential that the Zilla court should appoint an administrator for the managment of the estate. Then, we have rule 10 of which the first clause recites that whenever any person dies intestate and without known heirs, leaving property, the Judge within whose jurisdiction the property is, shall appoint an administrator for the management thereof. The learned pleader for the appellant argues that on the death of Gadigeppa, the permanent lease-hold rights came to an end because there were no known heirs and the property reverted to his landlords. Therefore, he did not die intestate leaving property of his own. It is therefore submitted

that there was nothing of which the administrator could take charge and hence the prodedure contemplated byrule 10 would not apply. Acepting the argument of the learned Pleader that on the dath of Gadigeppa without heirs the lease-hold rights would revert to the appellant as the landlords who granted the lease, still I think the further argument that the procedure contemplated by this Regulation would notapply cannot be accepted. As I have noted above, the preamble contemplaes the case where a person possessed of property dies intestate and without know heirs. Rule 10 provides for a person who died intestate and without known heirs, leaving property,. There is no doubt that the wording at these two places is different, but I think reading the rule in the lig of the preamble, what the Legislature intended was to provid for a case where, at the time of the death of a person dying intestate, he was possessed of property. This property must be inheritable property as distinguished from property which could not pass by succession. In-as-much as there is an emphasis on the words ' dying intestate without known heirs; this appears to me to be the only intention of the Legislature. We must, therefore, see as to whether there was any property which he had at the time of his death and which, if there are any persons claiming as heirs, could be inherited by them. When there are no heirs who come forth to claim the property, the Regulation provides that there should not be any confusion or scramble for the property and therefore it is provided that the property should be assumed by an dministrator appointed by the Court. Now, in the present case, it has been conceded that the perpetual lease-hold rights of the tenant were transferrable and heritable. Infact, the case for the appellants was that they were transferred and had been inherited. In my opinion, therefore, it must be held that Gagigeppa had property which could be taken over by the administrator.

7. There is another aspect from which the case may

be considered. The argument of the learned pleader, itself, is based on the contention that when a lease is granted, permanent or otherwise, it is a part of the total ownership rights of the landlord which he has alienated in favour of the tenant. It is, therefore, a bundle of inferior rights to the superior rights of the landlord. The argument advanced is that on the death of of the tenant without leaving any heirs, these inferior rights merge into the superior right of the landlord, in preference to the Crown. The Crown cannot take the property by escheat beacuse there is some body who could be the owner of these rights and therefore the Crown cannot claim that there was no claimant to the rights. If that is so, then Gadigeppa could be said to have died leaving these inferior rights behind. Under the Regulation, anybody claiming the property left by the deceased could submit his claim to the administrator. Therefore, if the appellants claimed that these inferior rights reverted to them, then their property remedy was to put in that claim to the ~~administration~~ administrator on the issue of the proclamation. If they failed to do so, within the time prescribed by the Regulation, they must abide by the result of the action taken by the Administrator. When the Administrator sells the property, he sells it for the benefit of the person who is entitled to the rights left by the deceased. The sale by the Administrator would be of these rights and the person, who ultimately claims these rights after the period prescribed for preferring a claim to the Administrator, would be entitled only to the sale proceeds. In my opinion, therefore, although the appellants may claim that there is a reversion to them of the lease-hold rights, their only remedy after the sale was to claim the sale proceeds. The very idea of reversion entails the acceptance of the propriety that there were certain rights which reverted to the landlord. In my opinion, therefore, the estate in the form of leasehold rights which the deceased had, must be taken to have been open for assumption by the Administrator. Therefore, I think that the proceedings taken under the Regulation were

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also valid and proper.

8. The next point which has been urged on behalf of the appellants is that the sale itself was not valid because there was no proper sanction of the High Court. On this point, it must be noted that even in the plaint there was no case made out that the sale was invalid because there was no proper sanction of the High Court. What was contemplated in the plaint was that the sale was invalid because it was held by the Collector. It is true that the case proceeded on the basis that the sale was being challenged because of some irregularity in the actual procedure and documents were produced for this purpose. But when the District Court directed the Administrator to sell the property and thereafter confirmed the sale, it must be presumed that all the procedure and formalities necessary under the Regulation were complied with. It was, therefore, for the appellants to show that the sale was invalid. The main point for the appellants is that the sale has not been sanctioned by the High Court. But the orders, if any, have been passed by the Registrar of the High Court. Exh. 22 is a copy of the orders which the Registrar has passed. It recites that the District Judge of Bijapur had forwarded the inventory of the property and had requested for sanction to the property being sold. The orderby the Registrar is to issue the usual orders. Now, it contended that the actuall orders has not been produced. The respondent No.2 produced a letter from the Registrar of the High Court (Exh.3) which says that no certified copy of the order could be supplied because the record of the intestate property had been destroyed. He has produced, however, a certified copy of the usual order issued in such a case. This is at Exh.24. It clearly shows that the Registrar must have sent a letter to the District Judge stating that the Honourable Judges of the High Court had been pleased to grant sanction. Now, when the District Judge, by his order, directed the property to be sold and stated that

the sanction of the High Court was ~~sent~~ obtained, I think tha we must hold that ~~t~~ he must have received the necessary sanction unless it is otherwise proved by the contending party. There is no such evidence adduced on their behalf. In my opinion, therefore, it could not be said that the sale was invalid because there was no sanction by the High Court. Therefore, the respondent No.2 got a valid title to the Property.

9. On my findings as above, therefore, the only right to which the appellants were entitled was the right to receive the proceeds from the Treasury. For the above reasons, therefore, the decision of the learned Civil Judge is correct and the appeal fails.

10. **Order.**

The appeal is dismissed with costs(separate ~~costs~~ costs)

31st August 1950. Sd. V.N.Palekar.
Assistant Judge.

" True Copy "

District Govt.Pleader,Bijapur.

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2920—10,000—6-47—R(s)*

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶಿಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಮಧ್ಯಾಹ್ನ ಇಲ್ಲಿಯ ಅಸಿಸ್ಟಂಟ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಬೆಳಗಾವಿ ಇಲ್ಲಿ. ನಿಃ ಬಿ

ಕೀರ್ತ್ಯಾಲರ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೫೩೭ ೧೯೪೪ನೇ ಸ್ಪೈಕಿ

ಆಪೀಲಿಂಟ (ಮೊದಲನೇ ಅಪೀಲದಾರರು)
(೧) ಅಣ್ಣಾಜಿ ಮತ್ತು ಚಿಕ್ಕಲೆ ಬೀಳತೇಲಿ ಮತ್ತು ಬಾಳಪ್ಪಣ್ಣ ಕಲ್ಲೆ ಆಚಲಿಗ
(೨) ಹುಬನಾಳ್ಳಿ ರೆವಾಡ ಕೋಲ್ಕಡ್ಡಿ ಸಾಕ್ಷಿ ಕೆಲಸಗಾರ ಮಾಡುವವರು, ಸಾ॥ ಬೆಳಗಾವಿ

ವಿರುದ್ಧ

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿಯವರು)
(೧) ಡಿ. ಎಲ್ ಪಿಂಟೋ ಆಫ್ ಬೆಳಗಾವಿ
(೨) ಶಿವಪ್ಪಾ ವೀರಭದ್ರಪ್ಪಾ ಕೊರವಕೊಪ್ಪಿ ವಯಸು, ಲಿಂಗಾಯತ ಜಾತಿ ನಿಃ ಗರ್ಡನಕೊಪ್ಪಿ ತಾಲ್ಲೂಕ ಸೌದತ್ತಿ

ಮೇಲಾಪೀಲು ಇಲ್ಲಿಯ ಸೀನಿಯರ ಸೇವರ್ಸ ಮುಖ್ಯ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೨ನೇ ಇಸವಿಯ ನಂಬರು ೨೨೬ನೇದರಲ್ಲಿ ತಾರೀಖು ೧೬ನೇ ಫೆಬ್ರುವಾರಿ ತಿಂಗಳ ಸನ್ ೧೯೪೩ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ ಮೇಲಿ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲಿ ಹೇಳಿದ ಅಪೀಲದಾರರು ———— ಇವರು ಸದರಿ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ ಮೇಲಿ ಮೇಲಾಪೀಲು ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ———— ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾರೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೩ ಅಕ್ಟೋಬರ ತಿಂಗಳಿನ 31 ತಾರೀಖಿನ ದಿವಸ ಶ್ರೀ V.N. ಶಾಸ್ತ್ರೀ ಅಸಿಸ್ಟಂಟ ಜಜ್ಜ ಇವರ ಮುಂದೆ, ಅಪೀಲಿಂಟರ ತರ್ಫಿನಿಂದ ವಕೀಲ ಶ್ರೀ A.B. ರಂಡಕಣವಾಡಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಶ್ರೀ K.H. ಕಿರಕಾರಿ ವಕೀಲ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಅಡಿಲು ಮ್ಯು ಇಂಡಿಯನ್ ಸಿವಿಲ ಪ್ರಕ್ರಿಯಾ

ಪ್ರಕ್ರಿಯಾ (Supplemental)

147 65

Suits.
Bijapur.
For a declaration that the Plaintiffs as the Inamdars of the village of Gaddankeri (Taluka Bagalkot) are the owners by escheat of the suit land, and for possession and future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 15202
Bombay Castle, 1st Nov. 1950.

Read Government Resolution, Legal Department No.7155 dated 28th June 1949.

Endorsement from the District Government Pleader, Bijapur

In the Court of the Civil Judge, (Senior Division) Bijapur. Civil Suit No. 376 of 1947 Annaji V. Desai. Gurunath V. Desai.... Plaintiffs. vs. Province of Bombay and another. Defendants.	No. 672, dated the 3rd October 1950 forwarding an uncertified

copy of judgment and stating that the appeal No. 53 of 1949 filed by the plaintiff in the suit noted in the margin was decided by the Assistant Judge, Bijapur, on 31st August 1950, when the following order was passed:-

"The appeal is dismissed with costs."

RESOLUTION: The result of the appeal is recorded.

By order of the Governor of Bombay,

original E.P.Bhamgara

E.P.Bhamgara,
Assistant Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Signed 27/11

ML/27

Submitted for signature
27/10

65
151

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Second Appeal No. 14 of 1951. Dist. Bijapur.

1. Annaji) Venktesh Desai,
2. Gurunath) minors by their guardian.

Deputy Nazir, District Court, Bijapur. ... Appellants.
(Orig. Plaintiffs).

Vs.

1. The State of Bombay.
2. Shivappa Ningappa Sarkpp of Gaddankeri,
Talkka Bagalkot. ... . Respondents.
(Orig. Defendants).

Claim Rs.112-8-0. for both purposes.

The appellants abovenamed beg to appeal against the decree of the lower court in Civil Appeal No. 53 of 1949 of the Court of the Assistant Judge at Bijapur dated 31st August 1950 on the following among other grounds.

1. That the lower Court erred in holding that Gadigeppa died leaving "Property" within the meaning of Bombay Reg.VIII of 1827.

2. That it is an error to hold that the sale held by the administrator was valid and binding on the appellants.

3. That it is an error to hold that the proceedings taken under the Reg. were valid and proper.

4. That the sale in question was not valid as there was no proper sanction of the High Court.

5. That the letter of the Registrar,High Court is misread and its effect misunderstood.

6. That it should have been held that the appellants are entitled to recover possession of the suit property from respondent No.2.

7. That it is an error to hold that the appellants are only entitled to receive the proceeds from the treasury.

8. That a new case is made for the State of Bombay.

9. That the decree of the lower court is contrary to law and equity.

Bombay. Sd. G.R.Madbhavi.
6-12-1950. Advocate for the Appellant.

Suits.

Bijapur.

For a declaration that the Plaintiffs as the Inamdars of the village of Gaddankeri (Taluka Bagalkot) are the owners by escheat of the suit land, and for possession and future mesne profits.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 7189
Bombay Castle, 12 May 1951.

Read Government Resolution, Legal Department, No. 15202, dated 1st November 1950.

Endorsement from the Collector of Bijapur No. L.A.W. 177 dated 2nd April 1951 requesting Government's sanction to the defence of the Second Appeal No. 14 of 1951 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge, (Senior Division), Bijapur.

Civil Suit No. 376 of 1947.

Annaji V. Desai
Gurunath V. Desai.....Plaintiffs.
vs.
Province of Bombay and another... Defendants.

RESOLUTION:- Sanction is accorded to the defence of 2nd Appeal No. 14 of 1951 in the High Court, Bombay and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Bijapur, dated 5th February 1949 and the District Court dated 31st August 1950.

By order of the Governor of Bombay,

(R.T. Katarki)
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur,
The Government Pleader, High Court, Bombay.

HSP/4/4

156

submitted after "risen"

file in S. Bijapur 1/46

A Debbs
11/5

A. solv. by 11/5

S. Bijapur 1/46
W. 14/5

K.138.

69

Typed by Mr. M.W.Karnik.

Rs.As.Ps.(Fls.10).Examined by Mr. D.T.Palwardar

Read by Mr. D.R.Lokarma

Copying & comparing charges. 3-12-0

Paper charges. 0--0-6

Total Rs. 3-12-6

Rupees three, annas twelve and pies six only.

Superintendent.
Decree Department.
21-4-1953.

Copy required for ... 13-3-53
Copy ready on 21-4-53
Copy delivered on 6-7-53
V.P.P.
Sent by Regd. Post on
Assistant Shorthand Writer

HIGH COURT APPELLATE SIDE BOMBAY

Appeal No.14 of 1951 from Appellate Decree.

Annaji Venktesh Desai and another. (Original Plaintiffs).) Appellants.

Versus.

The State of Bombay and another. (Original Defendants).) Respondents.

Second Appeal against the decision of V.N.Palekar, Esquire, Assistant Judge at Bijapur, in Appeal No.53 of 1949 from the decision of A.C.Sequeira, Esquire, Civil Judge Senior Division, at Bijapur, in Suit No.376 of 1947.

Mr. G.R.Madbhavi, Advocate for the Appellants.

M/s. V.S.Desai, Assistant Government Pleader for Respondent No.1.

Mr. V.V.Albal for and Mr. G.N.Vaidya, Advocate for Respondent No.2.

Coram:- Gajendragadkar, J.

9th March 1953.

Oral Judgment:-

This appeal raises a short question as to the effect of a sale which has been held under the provisions of Regulation VIII of 1827, the property sold being the lease-hold rights of Gadigeppa.

It appears that the plaintiffs are the Inamdars of the village Gaddankeri. Two fields bearing Survey Nos

K.138.

691

Typed by Mr. M.W.Karnik.

Rs.As.Ps.(Fls.10).Examined by Mr. D.T.Palwankar

Copying & comparing charges. 3-12-0

Read by Mr. D.R.Lokarna

Paper charges. 0--0-6

Total Rs. 3-12-6

Rupees three, annas twelve and pies six only.

Superintendent.
Decree Department.
21-4-1953.

Copy required for 13-3-53
Copy ready on 21-4-53
Copy delivered on 6-7-53
Sent by V.P.P. or Regd. Post

Assistant Superintendent

HIGH COURT APPELLATE SIDE BOMBAY

Appeal No.14 of 1951 from Appellate Decree.

Annaji Venktesh Desai and another.)
(Original Plaintiffs).) Appellants.

Versus.

The State of Bombay and another.)
(Original Defendants).) Respondents.

Second Appeal against the decision of V.N.Palekar, Esquire, Assistant Judge at Bijapur, in Appeal No.53 of 1949 from the decision of A.C.Sequeira, Esquire, Civil Judge, Senior Division, at Bijapur, in Suit No.376 of 1947.

Mr. G.R.Madbhavi, Advocate for the Appellants.

M/s. V.S.Desai, Assistant Government Pleader for Respondent No.1.

Mr. V.V.Albal for and Mr. G.N.Vaidya, Advocate for Respondent No.2.

Coram:- Gajendragadkar, J.

9th March 1953.

Oral Judgment:-

This appeal raises a short question as to the effect of a sale which has been held under the provisions of Regulation VIII of 1827, the property sold being the lease-hold rights of Gadigeppa.

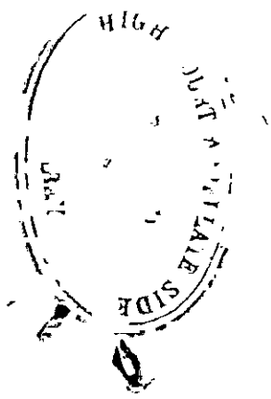
It appears that the plaintiffs are the Inamdars the village Gaddankeri. Two fields bearing Survey Nos.

and 133 were given by their predecessors to Gurushiddappa on the basis of permanent tenancy. Gurushiddappa sold his leasehold rights to Gadigeppa. Gadigeppa died in 1928 and his heirs were not known. Thereupon an administrator was appointed under the provisions of Regulation VIII of 1827 and the interest of the deceased in the properties in question was sold on the 31st of the March 1941. On the 26th of March 1943 the High Court sanctioned the sale. In the present suit, the Deputy Nazir, as the guardian of the minors representing the Inamdars' branch, contended that the whole procedure adopted in appointing an administrator in respect of the properties in question and getting them sold was invalid, and that on the death of the transferee from the permanent tenant the tenancy rights reverted to the landlord. The plaintiff, therefore, prayed for possession of the immoveable property after a declaration that the sale held was invalid and that the purchaser got no right, title and interest by virtue of such sale. To this suit the State of Bombay has been impleaded as defendant No.1 and the purchaser as defendant No.2. Both the Courts have held that the sale was prefectly valid and that the only relief to which the plaintiffs are entitled is to take away the sale-proceeds lying with the State. It is this decree passed by the Courts below that is challenged before me by Mr. Madbhavi on behalf of the plaintiffs.

Mr. Madbhavi contends that when Gadigeppa died the leasehold interests reverted to the landlord; and, according to him, there was readily no property of which Gadigeppa could be said to have died possessed. This, in my opinion, is clearly fallacious. Whatever the nature and extent of Gadigeppa's interest in the property in may have been, it is undoubtedly true that he was in possession as a permanent tenant and as such the rights which vested in him were heritable and partible. They constitute immoveable property and so an administrator could clearly have been appointed under the provisions of Regulation VIII of 1827. It may be that the plaintiffs are right when they contend that, before the leasehold rights of

11

of Gadigeppa cede to the Crown, they must revert to the landlord, and in that sense it may be legitimate to contend that, the fact that the District Court did not know that the landlord would be the next heir of Gadigeppa would not affect his right; even so it cannot be urged that the proceedings taken under Regulation VIII of 1927 are for that reason invalid. It would have been open to the landlord to intervene in those proceedings and to have claimed that they were the owners by reversion. It is in cases where no heir is left or no heir is known that an administrator can be appointed; and if an administrator was properly appointed, the sale that he held cannot be successfully challenged by the plaintiffs on the ground that they were the heirs by reversion and that the property should not have been sold. Therefore, in my opinion, the Courts below were right in coming to the conclusion that the sale held by the administrator did not suffer from any irregularity.



Then it is contended that the sanction obtained from the High Court was invalid, and the argument is that it is only the Registrar who purports to have given his sanction and that would be outside his jurisdiction. Unfortunately, the papers in regard to the sanction were destroyed; but the certified copy produced clearly shows that the Registrar intimated to the District Judge that Their Lordships of this Court were pleased to sanction the sale. All judicial acts of this kind must be presumed to have been properly performed and I see no justification for assuming that when the sale held under the provisions of Regulation VIII of 1827 had to be sanctioned by the High Court, it was not properly so done.

Therefore, in my opinion, the Courts below were right in holding that there was ~~nothing that there~~ nothing irregular in regard to the procedure adopted for selling the rights of Gadigeppa, and that the sale was binding against the appellants.

In the result, the appeal fails and must be dismissed with costs.

BY ORDER OF THE COURT,

Sd/- V.R.Gadkari.

DEPUTY REGISTRAR.

True Copy

For Deputy Registrar. 21/4

The 21st day of April 1953.

K.138. Rs.As.Ps.(Fls.6) Typed by Mr.P.J.Vyas.

Copying & comparing charges. 2 -4 -0 Examined by Mr. D.T. Palwankar

Paper charges. 0 -0 -6 Read by Mr. P.A. Phansekar

Total Rs. 2 -4 -6

Rupees two, annas four and pies six only.

Superintendent, D.D.,
16-4-1953.

Application for copy 13-3-53
Copy ready on 16-4-53
Copy delivered on 6-7-53
Sent by V.P.P. Book Post
Assistant Superintendent

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

In the High Court of Judicature at Bombay.

Monday the 9th day of March 1953.

Appeal No.14 of 1951 from Appellate Decree.

1. Annaji Venktesh Desai. 2. Gurunath Venktesh Desai, minors by their guardian Deputy Nazir, District Court Bijapur.

(Original Plaintiffs) .... Appellants.

Versus.

1. The State of Bombay. 2. Shivappa Ningappa Sarkop.

(Original Defendants) .... Respondents.

Claim:- Rs.112-8-0 for both purposes.

The plaintiffs sued for a declaration of their title to the property, for possession together with a claim for past and future mesne profits.

The Original Suit No.376 of 1947 was decided by the Civil Judge (Senior Division) of Bijapur who decreed the suit orderin that the plaintiffs are entitled to the sale proceeds deposited in the public treasury as a result of the sale but ordered the plaintiffs to pay the costs of defendants.

The Appeal No.53 of 1949 of the District File was decided by the Assistant Judge of Bijapur who confirmed the decree of the Court of first instance and dismissed the appeal with costs

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr.Justice Gajendragadkar on the 12th day of January 1951.

The grounds of objection to the decision appealed agains

1. That the lower court erred in holding that Gadi

leaving 'Property& within the meaning of Bombay Regulation No of 1827.

2. That it is an error to hold that the sale held by the administrator was valid and binding on the Appellants.

3. That it is an error to hold that the proceedings taken under the regulation were valid and proper.

4. That the sale in question was not valid as there was no proper sanction of the High Court.

5. That the letter of the Registrar, High Court is misread and its effect misunderstood.

6. That it should have been held that the appellants are entitled to recover possession of the suit property from Respondent No.2.

7. That it is an error to hold that the appellants are only entitled to receive the proceeds from the treasury.

8. That a new case is made for the State of Bombay.

9. That the decree of the lower court is contrary to law and equity.

Coram:- Gajendragadkar, J.

For the reasons stated in the accompanying Judgment, the Court confirms the decree passed by the lower appellate Court, and dismisses the appeal with costs.

9th March 1953. Sd/. V.R.Gadkari.

Deputy Registrar.

Bill of Costs in the High Court.

By the Appellants.	Rs.As.Ps.
Stamps for Memorandum of Appeal.	11- 4-0
Stamps for copies of Decrees and Judgments.	3-12-0
Stamps for vakalatnama.	2- 8-0
Bhatta for proces.	2 -8-0
Sectioner's fee.	13- 3-0
Advocate's fee.	45 -0-0
Printing charges.	11 -0-0
Total Rs.	89 -3-0

75 F.

By Respondent No.1.	Rs.As.Ps.
Stamps for vakalatnama (G.P.appears)	0 -0 -0
Advocate's fee.	45 -0 -0
Total Rs.	45 -0 -0

By Respondent No.2.	Rs.As.ps.
Stamps for vakalatnama.	2 -8 -0
Advocate's fee.	45 -0 -0
Total Rs.	47 -8 -0

(Seal)

Sd/. V.R.Gadkari.
Deputy Registrar.
The 9th day of March 1953.

....

True Copy.

for Deputy Registrar.
The 16th day of April 1953.

77+17

Suits.
Bijapur.

For a declaration that the Plaintiffs as the Inamdars of the village of Gaddankeri (Taluka Bagalkot) are the owners by escheat of the suit land, and for possession and future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15189/E
Bombay Castle, 21st July 1953.

Read Government Resolution, Legal Department No.7189, dated the 7th May 1951.

In the Court of the Civil Judge, (Senior Division), Bijapur.	Letter from the Government Pleader, High Court, Bombay No. 2180, dated the 10th March 1953
Civil Suit No.376 of 1947.	
Annaji V. Desai Gurunath V. Desai ..... Plaintiffs. Versus Province of Bombay and another... Defendants.	

stating that 2nd Appeal No.14/51 in Civil Appeal No.53/49 in the suit noted in the margin was decided by the High Court on the 9th March 1953, when the following order was passed:-

" Appeal dismissed with costs".

Letter from the Government Pleader, High Court, Bombay No.5236, dated the 15th July 1953, forwarding certified copies of the judgement and decree.

Resolution :- The result of the appeal is recorded

By order and in the name of the
Governor of Bombay,

R. T. Katarki
original (R.T. Katarki)
Deputy Secretary to Government

To

The Revenue Department,
The Collector of Bijapur,
The Government Pleader, High Court, Bombay.
The District Government Pleader, Bijapur.

Submitted for signature
21/7

Signed 21/7

DS (Civil)

A/21-7-